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No._____

IN THE SUPREME COURT OF THE UNITED STATES

In re Isidoro Rodriguez,

Petitioner.

On Petition For Writ of Certiorari
to the United States Court of Appeals for the
Second Circuit

PETITION FOR WRIT OF CERTIORARI

Isidoro Rodriguez, Esq.
Counsel for Petitioner
Member of the Bar of this Court since
September 11, 1992

7924Payton Forest Trail
Annandale, Virginia 22003-1560
Telephone: 571.423.5066
E-Mail: isidoror@EarthLink.net

The evidence in court records confirms that in retaliation for Isidoro Rodriguez ("Rodriguez") litigating to enforce his substantive statutory rights, and petitioning Congress and the Virginia General Assembly, Federal and Virginia government attorneys and judges criminal conspiracy to obstruct his rights as a father and deprive him of his property. The linchpin of the conspiracy was Beltway Lobbyist/Attorney Eric Holder *et al.,* and Rodriguez's former client to file in 2003 fraudulent bar complaints for litigating to enforce statutory rights. In 2006, the Virginia State Bar Disciplinary Board ("VSBDB") issued an order revoking Rodriguez' bar license. Despite the evidence that the VSBDB order was *void* for lack of judicial authority and subject matter jurisdiction under Virginia's Constitution and Code, and for the depriving of Federal statutory rights, the Supreme Court of Virginia affirmed the VSBDB *void* order. This Court denied cert. in 2007. On July 31, 2009, a grievance panel of the U.S. Court of Appeals for the Second Circuit (2nd Circuit), rejected its duty to provide impartial appellate review as per the *Stare Decisis* under the *Void* Order Doctrine and statute, so to disbar Rodriguez and deny him 18 U.S.C. § 3771 protection as a victim of the criminal conspiracy to give validity to the VSBDB *void* order. A petition for rehearing *en banc* was denied on November 20,

QUESTIONS PRESENTED FOR REVIEW

I. Whether the 2nd Circuit deprived Rodriguez of his right to substantive and procedural due process, and substantive statutory rights, by rejecting the *Stare Decisis* of *Selling* and *Theard*, and the *Void* Order Doctrine?

III. Whether the 2nd Circuit violated its duty under 18 U.S.C. § 3771 to protect Rodriguez as a victim of a RICO criminal conspiracy to deprive Rodriguez of his statutory right as a father and to property rights in his perfected Virginia attorney's lien, business, profession, and right employment as an independent federal civil litigator in violation of 18 U.S.C. §§ 4, 241, 242, and 1513, by Federal and Virginia government attorneys and judges assuming the VSBDB *void* order as a valid one?

PARTY TO THE PROCEEDINGS

The caption of the case does contain the name of the only party, who is not a corporation.

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CITATIONS TO OPINIONS BELOW

The *void* Orders of 2nd Circuit and its Grievance Panel are reproduced respectively at A–1 and A-2.

STATEMENT OF JURISDICTION

The order denying *en banc* rehearing was entered on November 20, 2009. The jurisdiction is invoked pursuant 28 U.S.C. §§1254(1) and 2072.

STATEMENT REQUIRED BY RULE 29.4

Pursuant to 28 U.S.C. § 2403(a) and (b), the Court is informed that this Petition has been served upon the Solicitor General of the United States and the Attorney General of the Commonwealth of Virginia.

FEDERAL AND VIRGINIA CONSTITUTIONS AND VIRGINIA CODE SECTION INVOLVED ARE IN THE ADDENDUM

STATEMENT OF THE CASE

In retaliation for Rodriguez's litigation to enforce the rights of nonresident U.S. citizens and noncitizens,[1]

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[1]Rodriguez established and has maintained a successful federal/international litigation sole practice since 1987 to the present from Barranquilla, Colombia and Northern Virginia. In 1995, *The Legal Times* confirmed that he was the only known federal litigation attorney residing outside of the Untied States who was opposing attorneys in the Executive and Judicial Branch policy denying Constitutional/statutory limitations on the power of the U.S. government. *See Martinez v. Lamagno and DEA*, 515

evidence confirms that beginning in 2003 a criminal enterprise was undertaken by attorneys in the U.S. Department of Justice, the Office of Attorney General of the Commonwealth of Virginia, and John/Jane Doe Judges acting negligently and criminally outside of their ministerial/judicial authority, as well as Beltway Attorneys and Lobbyists 1-50 ("DOJ *et al.*"):

i. To obstruct in violation of 18 U.S.C. § 1204, Rodriguez's rights as a father; and,

ii. To injure, stigmatize, and deny Rodriguez of his business, profession and right to employment as an independent federal litigation attorney in violations of the Racketeer Influence and Corrupt Organizations Act (RICO"), 18 U.S.C. §§ 1961-68 (A), 18 U.S.C. §§ 241, 242, and 1513, and VA Code § 18.2-499 and 500.

A. Proceedings before the VSBDB

The linchpin of the RICO criminal conspiracy to deprive Rodriguez of his statutory right as a father and to his perfected Virginia attorney's lien, business, pro-

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U.S. 417 (1995)(DOJ's surreally argued that a DEA agent causing a car accident while driving drunk and having sex was not negligent. On remand the courts in the 4th Circuit summarily dismissed the action); *See also, Organization JD Ltda. v. Assist U.S. Attorney Arthur P. Hui and DOJ*, 2nd Cir. No. 93-6019 and 96-6145; and, *Lopez v. First Union*, 129 F3rd. 1186 (11th Cir. 1997) (Action for illegal interception of wire communication/access to bank records); *See also, Cooperativa Multiactiva de Empeados de Distribuidores de Drogas (Coopservir Ltda." v. Newcomb, et al.*, D.C. Cir. No 99-5190, S Ct. No 99-1893 (Suit for issuance of prohibitive bill of attainder).

fession, and right to employment as an independent federal civil litigator, was the retaining in 2003 of Beltway Attorneys/Lobbyists Mr. Eric Holder, Ms. D. Jean Veta, and Covington & Burling LLP, as well as Ms. Susan Brinkerhoff, and Proskauer Rose LLP ("Holder *et al.*"), who jointly filed in retaliation for Rodriguez's litigating to enforce rights under the Treaty and Va. UCCJEA, a fraudulent bar complaint from the District of Columbia with the VSBDB in October 2003.[2]

Also, Holder *et al.* conspired with Rodriguez's former client, IOTA Partners, to deprive him of his property rights in his perfected Virginia Attorneys Lien on approx. $10 Billion *treasure troves* sunk off the coast of the Republic of Colombia, by filing a bar complaint in retaliation for litigating to enforce his statutory right under Va. Code § 54.1-3932.

After three years of investigation without finding any bases to act upon the fraudulent bar complaints, in

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[2]From 2003 to 2005, court records confirm that DOJ *et al.* obstructed Rodriguez's rights as a father to compel DOJ et al., to secure his right to international visitations with his Son under *Article* 21 of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980 ("Treaty"), the International Child Abduction Remedies Act, 42 U.S.C. § 11601(a) & § 11602(1) and (7); Congressional Joint Concurrent Resolution 293, May 23, 2000; and, the Uniform Child Custody Jurisdiction and Enforcement Act ("VA UCCJEA") VA Code § 20-146.01 *et seq.* *See, Isidoro Rodriguez, Esq. and Isidoro Rodriguez-Hazbun v. NCMEC, et al.*, D.C. No. 03-0120 (Roberts, J.) (There the court stayed for more than two years compliance with the Treaty and Va. UCCJEA, and then summarily dismissed the action as moot, and struck the RICO cause of action based on absolute government immunity from tortious and criminal acts).

retaliation for petitioning Congress and the General Assembly to investigate government attorneys and judges acts outside of their ministerial and judicial authority by obstructing Rodriguez's Treaty rights (*See*, http://www.liamsdad.org/others/isidoro.shtml), the VSBDB revoked Rodriguez' license to practice law in Virginia for litigating to enforce his statutory rights.

To no surprise the Supreme Court of Virginia affirmed the VSBDB *void* order on June 28, 2007–without addressing the challenge to the VSBDB *void* order because it had neither jurisdiction nor judicial authority to disbar him, and even a court was prohibited from disciplining him for litigating to enforce his statutory rights. Surreally, this Court denied certiorari (No. 07-419, November 2007).

Subsequently, court records from 2007 to the present confirm a conspiracy of misprision of a felony by government and judges to deny access to an impartial court and jury trial so to bar challenge to the VSBDB *void* order and permit the depriving of Rodriguez of his business, profession, employment as an independent federal litigator, i.e., in *Isidoro Rodriguez, Esq. v. Editor in chief, Legal Times*, D.C. District Court No. 07-0975 (2007), the District Judge Feldman granted summary dismissal of the RICO action for lack of venue in DC, and then declared all the attorneys and judge absolute immunity from accountability).

B. Proceeding Before the 2nd Circuit

Based on the evidence of a criminal conspiracy to punish Rodriguez for opposing the concentration of

power within the Virginia Judicial Branch by their issuing court rules to usurp power granted only to the General Assembly, Rodriguez on December 18, 2006, gave notice to the 2nd Circuit of the VSBDB *void* order, demanded a Show Cause Hearing, and requested the protection of the court under 18 U.S.C. § 3771.

On July 16, 2008, an Order of Disbarment pursuant to Local Rule 46(f)(1), was issued by the Office of the Clerk notifying Rodriguez that he was automatically disbarred without notice or hearing based on the VSBDB *void* order. On September 15, 2008, Rodriguez filed a request for the date of the Show Cause Hearing pursuant to FRAP Rule 46.

On July 31, 2009, without a public hearing or any legal analysis or explanation the Grievance Panel issued a summary order affirming the automatic reciprocal disbarment of Rodriguez by rejecting all his arguments, "including his argument that the Virginia disbarment orders are void, that the Virginia disbarment was imposed for retaliatory or other improper reasons, and that the Virginia proceedings violated his due process rights," and refused to comply with the mandate of 18 U.S.C. § 3771 to protect him as a victim of the criminal conspiracy of government attorneys and judge to punish him for litigating to enforce his federal statutory rights. The petition for rehearing en banc, was denied on November 20, 2009 (A-1).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Rodriguez calls for the exercise of this Court's

power of supervision to vacate the 2nd Circuit's *void* disbarment orders assuming the VSBDB *void* order is valid, because it is a far departure, if not the total disregard of the federal court's oath and duty to provide impartial appellate review of the on going violations of the Constitution and Code of Virginia, as well as its duty to protect substantive Federal statutory rights.

I. THE 2ND CIRCUIT REJECTION OF THE *STARE DECISIS* OF THE *VOID* ORDER DOCTRINE DEPRIVED RODRIGUEZ OF THE RIGHTS AND PROTECTION OF VIRGINIA'S CONSTITUTION AND CODE, AND FEDERAL LAW.

> Asserting that all power derives from the consent of the governed, the federal and state constitutions act as distribution grids —apportioning authority between the federal government and the fifty states, and then even more so between the separate states and their various localities. At both the federal and state levels, an additional tripartite division of authority separates legislative, executive, and judicial power.[3]

Regarding judicial power, more than 225 years ago the Virginian Patrick Henry famously stated that:

> Power is the great evil with which we are con-

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[3]The Honorable D. Arthur Kelsey The Architecture of Judicial Power: Appellate Review & *Stare Decisis*, Virginia Lawyer, October 2004.

> tending. We have divided power between three branches of government and erected checks and balances to prevent abuse of power. However, where is the check on the power of the judiciary? If we fail to check the power of the judiciary, I predict that we will eventually live under judicial tyranny.[4]

Thus, the drafters of the United States and Virginia Constitutions fractured it in innumerable ways so to place surge protectors throughout the organization of government to safeguard against dangerous concentrations of unchecked power by either of the three branches.

In Virginia, to place the "check" upon the power of the judiciary, the people enacted Article VI §§ 1 and 7 of the Constitution of Virginia, giving the General Assembly the exclusive power to establish and give subject matter jurisdiction to "courts" and to appoint judges (Add-3). In *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat. 264, 404 (1821), the Court stated that the Judicial Branch has, "no more right to decline the exercise of jurisdiction which is given, than to usurp

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[4]See, THE FEDERALIST No. 47 and THE FEDERALIST No. 48 (James Madison) (discussing the dangers of concentration of power). THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 196 (1787); see also JOSEPH STORY, A FAMILIAR EXPOSITION OF THE CONSTITUTION OF THE UNITED STATES § 60, at 68 (1859) [hereinafter STORY, EXPOSITION] ("Whenever [the executive, legislative and judicial powers] are all vested in one person or body of men, the government is in fact a despotism, by whatever name it may be called, whether a monarchy, or an aristocracy, or a democracy."). (Emphasis added)

that which is not given. The one or the other would be treason to the constitution." (Emphasis added)[5]

Later, the General Assembly used its power to control the jurisdiction, and judicial power by adding a supplemental check by enacting VA Code § 54.1-3935,[6] to create an independent statewide legal profession restricting the discipline of any attorney. Also, consistent with Article VI § 5 of the Constitution, the General Assembly enacted VA Code § 54.1-3915 (Add-3), to assure the independence of attorneys from total control by the Judicial Branch by prohibiting the Supreme Court of Virginia from promulgating rules inconsistent with the rights granted an attorney by any statute.

This was consistent with the view that the Judicial Branch was to be the weakest branch because

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[5]Va. Code§ 18.2-481(5), makes it a crime of treason for a court to, "[resist] the execution of the laws under color of its authority." (Emphasis added). *See* Criminal Complaint/Affidavit with the Office of the Governor, Fairfax County Police, the Fairfax Commonwealth Attorney and Fairfax County Magistrate Office for treason, misprision of the felony, obstructing justice and business conspiracy in violation of Va. Code §§ 18.2-481(5), 2-482, and, 499 (*See* http://home.earthlink.net/~treason/).

[6] As explained in *Legal Club of Lynchburg v. A.H. Light*, 137 Va. 249, 119 S.E. 55 (1923), although in Virginia in a proper case a court does have inherent power to suspend or annul the license of an attorney practicing in the particular court which pronounces the sentence of disbarment, "[t]he power to go further and make suspension or revocation of license effective in all other court of the Commonwealth must be conferred by statute." *Fisher's Case, 6 Leigh* (33 Va.) 619. (Emphases added).

it was controlled by statute and previous case precedent. In Federalist No. 78, Alexander Hamilton cited 1 *Montesquieu, Spirit of the Laws* 186 (1752), to argue that the judiciary, though independent of the legislative and executive branches, would be self-policing through its adherence to "strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them." He argued that this inherent self-restraint and respect for precedent would assure that it was "least dangerous" to the liberties of the people.

Thus, given the above limitation on the Judicial Branch the General Assembly enacted Va. Code § 54.1-3935, establishing the exclusive attorney disciplinary procedure which a "court" was permitted to use to revoke a Virginia attorney's license beyond the limits of the *Fisher's Case, supra.*, When Has the Supreme Court of Appeals Original Jurisdiction of Disbarment Proceedings? R.H.C. Virginia Law Review, Vol. 10, No. 3 (Jan. 1924), pp. 246-248.

In Virginia, as in the other 49 States and in the Federal Government any judicial action contrary to the constitution is *void* in its entirety and inoperative as if it had no existence from the time of its issuance and can be attacked in any proceeding where they come into issue. As explained by Chief Justice John Marshall in *Marbury v. Madison*, 1 Crunch 137, 140 (1803), a legislative act or judicial order which is"repugnant to the constitution is *void.*" *See, Pennoyer v. Neff*, 95 US 714 (1877); *see also Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974)("a void judgment is no judgment at all and is without legal effect") (Emphases added).

As explained by the Supreme Court of Virginia, "[a] *void* judgment is one that has been . . . entered by a court that did not have jurisdiction over the subject matter." *Rook v. Rook*, 233 Va. 92, 353 S.E2d 756, 758 (1987)(Emphasis added). This is because

> Subject matter jurisdiction is granted by constitution or statute, it cannot be waived, and any judgment rendered without it is *void ab initio.* Lack of subject matter jurisdiction may be raised at any time, in any manner, before any court, or by the court itself. *Nelson v. Warden*, 262 Va. 276, 552 S.E.2d 73 (2001),

Consequently, it is a in violation of Article VI, §§ 1, 5, and 7 of the Constitution of Virginia for the Supreme Court of Virginia to delegate judicial power to create the VSBDB as a "kangaroo court," and a violation of Va. Code § 54.1-3935 to create any other attorney disciplinary system.[7] Therefore the VSBDB issued a *void* order that cannot be viewed as valid.

But, in total disregard of the Va. Constitution, Va. Code, and Federal and Virginia case law, the 2nd Circuit summarily and cavalierly transformed both the VSBDB and the Supreme Court of Virginia *void* orders

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[7]In Virginia it is "well recognized rule of construction that if a Rule of the Supreme Court [of Virginia] is at variance with a statutory enactment, the terms of the statute must prevail." 1996 Va. AG 23, at page 2. Thus, even the three judge panel created by Part Six, Section IV, Paragraph 13 of the Rules of Supreme Court of Virginia violates the procedure established by the General Assembly under Va. Code § 54.1-3935(A) and (B)(Add-4).

into a valid order for purposes of rejecting Rodriguez arguments so summarily disbar him. But, because the term jurisdiction embraces subject matter jurisdiction, which is the authority granted by the VA constitution or Code to adjudicate a class of cases or controversies-- the 2nd Circuit order is itself a violation of the *Void* Order Doctrine. As explained in *Morrison v. Bestler,* 239 Va. 166, 167-170, 387 S.E.2d 753 (1990), while a court always has jurisdiction to determine whether it has subject matter jurisdiction,

> **a judgment on the merits made without subject matter jurisdiction is *null and void. Barnes v. American Fert. Co.*, 144 Va. 692, 705, 130 S.E. 902, 906 (1925). Likewise, any subsequent proceeding based on such a defective judgment is *void or a nullity. Ferry Co. v. Commonwealth,* 196 Va. 428, 432, 83 S.E.2d 782, 784 (1954). (Emphasis added).**

Consequently, the VSBDB *void* order cannot be transformed by any court into a valid one because it was issued in violation of the subject jurisdiction matter granted only to a court under Article VI of the Constitution and VA Code § 54.1-3935, and issued in violation of the prohibition of VA Code § 54.1-3915. Therefore, the order of disbarment of Rodriguez by the 2nd Circuit is *void.*[8]

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[8] *In re: Isidoro Rodriguez, Esq.*, U.S. Tax Ct. No. _____ (Notice of Appeal has been filed), the Tax Court disbarred Rodriguez by disregarding the restrictions under Art. IV of the Va. Constitution (Add-2), and the prohibition of Va. Code § 54.1-3915, provide evidence of the ongoing RICO conspiracy. There the

A. THE 2ND CIRCUIT REJECTION VIOLATED THE *STARE DECISIS* OF *SELLING* AND *THEARD.*

A central part of the subdividing of power worked its way into the design of the Judicial Branch, so that it was controlled by two companion sets of rules of impartial appellate review,[9] and the doctrine of *stare decisis.*

These two rules were designed to provide order and stability to the judicial process, so to create a diffusion of decision making power and thereby limit

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court hold that the VSBDB order was valid "because the Supreme Court of Virginia was given authority to promulgate rules to discipline an attorney." Thus, based on court rules the Judicial Branch can now establish the VSBDB as an illegal *"kangaroo court"* to deprive an attorney of his Federal statutory rights. *See also In the Matter of Isidoro Rodriguez,* S.Ct Docket No. 08-942, filed January 18, 2009, cert denied, May 17, 2009; *Isidoro Rodriguez, Esq. v. Supreme Court of Virginia et al.,* (S. Ct. No. 07-419, November 2, 2007); *See also,* Motion for Injunction to Third Circuit denied U.S. Sup. Ct. Docket No. 08A858 (May 4, 2009), and Petition for Certiorari to Third Circuit, denied Docket No. 08-1121(May 18, 2009). *See also, Rodriguez v. Hassell, et al.*, Docket Nos. 0714, and 08-574; and Docket Nos. 03-971,05-545, 05-1059, 05-5130, 05-5202, 07A142, 07A370, 07-419, 07A601, 08-339, 08A399, 08-411, 08-574, 08A838, 08-942.

[9]Appellate "review" is the "[e]xamination of a lower court's decision by a higher court, which can affirm, reverse, or modify the decision." BLACK'S LAW DICTIONARY 1320 (6th ed. 1999); see also *Turner v. Jackson,* 14 Va. App. 423, 431 n.5, 417 S.E.2d 881, 887 n.5 (1992) (noting the "[s]tandard of review" is the "degree of deference" given by the appellate court to the lower court's decision based on the law).

the risk of creating dangerous nodes of central power within the Judicial Branch of government. Consequently, just as separation of powers and federalism purposefully segment governmental power, so too do the principles of appellate review and *stare decisis* placed a control on the power of the Judicial Branch.[10]

i. *The 2nd Circuit Failed to Provide Impartial Review.*

The Rule of Law confirms that the genes of the *Void* Order Doctrine is rooted in the concern for *due process*. This is because the general definition of *due process* is, "**the right to a fair hearing before a tribunal with the power to decide the case.**" Bryan A. Garner, Black's Law Dictionary, at page 538 (8th ed. 1999). (Emphasis added). Also, the Court held that: "Disbarment, designed to protect the public, is a punishment or penalty imposed. . . .[Thus, [t]hese are adversary proceedings of a quasi-criminal nature." *In re Ruffalo*, 390 U.S. 544, 550-551 (1968). Accordingly, compliance with the requirement of both substantive and procedural *due process* attach. *See* Restatements, Judgment

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[10]Alexander Hamilton, discussing the constitutional plan for the judiciary, divided his discussion into three principal topics, the third of which was **"[t]he partition of the judiciary authority between different courts, and their relations to each other."** THE FEDERALIST No. 78 (Alexander Hamilton) (Emphasis added). This topic consumed the majority of Hamilton's further writings on the judiciary in THE FEDERALIST No. 80 (discussing the rationale for the constitution's jurisdictional grants to the Supreme Court), No. 81 (discussing the "distinct and independent organization of the Supreme Court" from the legislature, and "the propriety of the power of constituting inferior courts"), No. 82 (expounding on the division of judicial power between federal and state courts).

§ 4(b); *See also, Earle v. McVeigh,* 91US 503, 23 L Ed 398 (1999).

As Chief Justice John Marshall stated in *Ex parte Burr,* 9 Wheat. 529 at 532, federal judicial review will interpose itself in State disbarment proceedings when they are "irregularity in the mode of proceeding." *See also, Ex parte Secombe,* 19 How. 9; *Ex parte Bradley,* 7 Wall. 364; and, *Thatcher v. United States,* 212 F. 801, 804. Later this Court held that the standard in determining if a violation of *due process* has occurred is, "to see whether this process conflicts with any of the [Constitutional] provisions). If not found to be so, we must look to those statute law . . . ." *Murray's Lessee v. Hoboken and Improvement Co.,* 18 How (59 U.S.) 272, 276-277 (1856).

In *Selling v. Redford,* 243 U.S. 46 (1917), this Court held that solely by the action of "a court" with jurisdiction may one who has secured admission in a federal court be disbarred from practicing before it or any Federal Court.[11]

Furthermore, in *Theard v. United States,* 354 U.S. 278 (1957), the Court held that while a lawyer is

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[11]"The federal court is to assure that the state proceeding was: first, not "wanting in *due process,*" by a failure to be heard by a court with jurisdiction, or "that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do." *Id.* At 51. *See also,* mandate of VA Code § 8.01-681.

admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route, and, the "principles of right and justice" require a federal court not to enforce automatic disbarment of a lawyer unless the standards defined in *Selling, supra*, followed.[12]

As noted this Court held that an *invalid* and *void* order can be attacked in any proceeding where they come into issue. *See, Nguyen v. United States*, 539 U.S. 69 (2003), holding that any decision of an improperly constituted judicial body must be vacated, i.e. judicial authority cannot be delegated (*Judici officium sum excedenti non paretur*, "To a judge who exceeds his office or jurisdiction no obedience is due").[13]

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[12]In *In re Disbarment of Isserman*, 345 U.S. 286 at 288, 73 S.Ct. 676, 97 L.Ed. 1013 (1953), the Court reconfirmed that disbarment by a state does not automatically disbar members of a Federal bar. Also, in *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 239, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957), the Court went on to hold at footnote 5, "[w]e need not enter into a discussion whether the practice of law is a "right" or 'privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace." *Ex parte Garland*, 4 Wall. 333, 379 (Emphasis added).

[13]Judicial power," is defined as, "[t]he authority vested in courts and judges to hear and decide cases and make binding judgements on them; . . . . " Bryan A. Garner, Black's Law Dictionary, at 864 (8th ed. 1999). Disregarding this Rule of Law, Mr. James Leroy Banks of the VSBDB surreally asserted that the entity had authority to disbar an attorney because the Supreme Court of Virginia "delegated" judicial authority and appointed them as judges. *See Rodriguez, Esq. v. Ed., Legal Times, supra.*

However, in the instant action Rodriguez was denied of his right to substantive and procedural due process by the 2nd Circuit summarily rejecting the evidence of the violations of the Constitution of Virginia, Va. Code and the *Void* Order Doctrine.

B. THE 2ND CIRCUIT REJECTION OF THE DOCTRINES OF *STARE DECISIS* AND *VOID* ORDER

The "Rule of Law" hangs upon an incredibly fine thread: the promise that each case will be treated the same under the same rules. The Latin term for this is "*stare decisis*" which literally translated means, "stand by things decided."

This Court's own Chief Justice when testifying before the Senate Judiciary Committee stated that judges are "bound down by rules and precedents." He continued stating that: "the founders appreciated the role of precedent in promoting evenhandedness, predictability, stability and integrity in the judicial process." In conclusion, the Chief Justice affirmed that: "a sound judicial philosophy should reflect recognition of the fact that the judge operates within a system of rules developed over the years by other judges equally striving to live up to the judicial oath."[14]

As explained above Chief Justice Roberts was stating nothing new. This principle of reliance upon enunciated precedent is at the backbone of our legal

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[14]http://judiciary.senate.gov/. *See also*, Federalist No. 78.

system. As stated by Justice Joseph Story:

> The case is not alone considered as decided and settled; but the principles of the decision are held, as precedents and authority, to bind future cases of the same nature. This is the constant practice under our whole system of jurisprudence. Our ancestors brought it with them, when they first emigrated to this country; and it is, and always has been considered, as the great security of our rights, our liberties, and our property. It is on this account, that our law is justly deemed certain, and founded in permanent principles, and not dependent upon the caprice or will of judges.
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> ***
>
> A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles. This known course of proceeding, this settled habit of thinking, this conclusive effect of judicial adjudications, was in the full view of the framers of the constitution. It was required, and enforced in every state in the Union; and a departure from it would have been justly deemed an approach to tyranny and arbitrary power, to the exercise of mere discretion, and to the abandonment of all the just checks upon judicial authority. (Emphasis added.)[15]

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[15]Justice Joseph Story, *Commentaries on the Constitution of the United States*, §377-78 (1983).

Thus, the evidence confirms that at a bare minimum, Rodriguez has been denied of the protection of the *stare decisis*[16] under the *Void* Order Doctrine prohibiting the 2nd Circuit from changing the settled legal principle of *Legal Club of Lynchburg v. A.H. Light*, 137 Va. 249, 119 S.E. 55 (1923), as well as the clearly stated prohibitions on the Judicial Branch under the Article VI Virginia Constitution and restrictions under VA. Code, because it would produce a result that the 2nd circuits dislikes-i.e. it declaring that the VSBDB order and the promulgation of the Rules of the Supreme Court of Virginia creating the VSBDB as a "*kangaroo court*" are *void*.[17]

The 2nd Circuit summary rejection of Rodriguez's arguments to assume the VSBDB *void* order as valid

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[16] See, e.g., WILLIAM O. DOUGLAS, STARE DECISIS 8 (1949) ("*Stare decisis* serves to take the capricious element out of law and to give stability to a society.").

[17] "But *stare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U.S. 106, 119 (1940). But, while *stare decisis* is not an "inexorable command," the "careful observer will discern that any detours from the straight path of *stare decisis*" occur only "**for articulable reasons.**" *Vasquez v. Hillery*, 474 U.S. 254, 266 (1986)(Emphasis added). When abandoning precedent, a court must distinguish between statutory and constitutional questions. Abandonment precedent is more difficult then when "the Court is asked to overrule a point of statutory construction." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989).

confirms the consensus that court views *stare decisis* as "little more than a joke,"[18]

The evidence is that the 2nd Circuit's decision to give effect to the VSBDB *void* order is a subterfuge for politicizing the judicial process so to permit government attorneys and judges absolute immunity for acts outside of their ministerial and judicial authority, i.e. punishing Rodriguez for litigating to enforce his statutory rights as a father and independent federal litigator.[19]

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[18]See CHARLES E. FRIEND, THE LAW OF EVIDENCE IN VIRGINIA § 1.6(b), at 32 (5th ed. 1999) ("Appellate courts are, supposedly, subject to the doctrine of *stare decisis*, which is defined as the policy of courts to stand by their precedents and not to disturb settled points of law. As American law has become more and more politicized, many appellate courts, most notably the Supreme Court of the United States, have begun virtually to ignore *stare decisis*, until today it is, in many courts, little more than a joke.").

[19]As explained by Judge D. Arthur Kelsey, *supra*, the evidence confirms that the merger of law and politics is not harmless. It is something to be resisted at every step. The moment we become tolerant of judges imposing their own personal or political philosophies through judicial we compromise our ability to make a principled objection to this exercise of power when we think the judges got the answer wrong. If you think this point is not that important, go back and reread the Dred Scott decision, in which the highest court in the land declared there to be a constitutional right to enslave our countrymen, and on that basis, struck down the Missouri Compromise. Then consider the dissent of Justice Curtis:

> Political reasons have not the requisite certainty to afford rules of [judicial] interpretation. They are different in different men. They are different in the same men at dif-

II. RODRIGUEZ CANNOT BE DISBARRED BY THE 2ND CIRCUIT FOR LITIGATING TO ENFORCE HIS STATUTORY RIGHTS.

At the outset, Rodriguez's litigation to enforce his Federal and Virginia statutory rights as a father and to protect his perfected attorney's lien are protected acts by Article VI § 5 of the Constitution of Virginia, and Va. Code 54.1-3935, which prohibit the Supreme Court of Virginia from promulgating rules proscribing a code of ethics in conflict with an attorneys statutory rights.[20] Also, a Federal statutory "right . . . granted by Congress and cannot be taken away by the State." (Emphasis added). *Donovan v. City of Dallas,* 377 U.S. 408, 413 (1964).

Furthermore, Rules Enabling Act, prohibit the2ndCircuit from abridging or modifying Rodriguez's

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> ferent times. And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean.

Dred Scott v. Sanford, 60 U.S. (19 How.) 393, 62021 (1857) (Curtis, J., dissenting).

[20]Even Part 6, § IV, ¶ 13 (G)(1)(a)(1) and (5) of the Rules of the S. Ct. Va. prohibit the VSBDB from investigating the actions of an attorney which are in compliance with and "protected by superseding law."

substantive statutory rights. *Amchem Products, Inc. v. Winsor*, 117 S.Ct. 2231, 2244 (1997). Finally, 18 U.S.C. §§ 241, 242, and 1513, make it a crime for the 2nd Circuit or any court to punish Rodriguez for exercising his federal statutory rights. *See*, *U.S. v. Murphy* 768 F.2d 1518 (7th Cir. 1985).

Thus, in accordance with the above express prohibition of Congress as well as that of the Virginia Constitutions and Code, the 2nd Circuit has no authority to disbar Rodriguez for exercising his statutory rights, least of all based on the VSBDB *void* order.

CONCLUSION

The prohibitions of Article VI of the Constitution of Virginia and VA Code § 54.1-3915 and 3935, have been violated by the Supreme Court of Virginia creating the VSBDB. Thus, the 2nd Circuit's *void* order has aided and abetted the resisting of the execution of the laws of Virginia since 2003 by rejecting *stare decisis* so to deprive Rodriguez of his statutory right as a father and to his perfected Virginia attorney's lien, business, profession, and right employment as an independent federal civil litigator. For the above reasons, in the interest of justice this Court must grant the Petition.

Respectfully submitted,

By: *Isidoro Rodriguez, Esq*

Isidoro Rodriguez, Esq.
Admitted to the Bar of
The United States Supreme Court, Sept. 11, 1992

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U.S. CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution, states, "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . . ."

The Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution, states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

CONSTITUTION OF VIRGINIA INVOLVED

Article I, § 11. Due Process of Law; . . . ; provides,[t]hat no person shall be deprived of his . . . property without due process of law; . . . .

Article I, § 12. Freedom of Speech and the press; right to peaceably assemble, and to petition. That the freedom of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people. . . to petition the government for the redress of grievances.

Article VI, § 1. Judicial power; jurisdiction. — The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may . . . establish.

Article VI, § 5. Rules of practice and procedure. — The Supreme Court shall have the authority to make rules governing the course of appeals and the practice and procedures to be used in the courts of the Commonwealth, but such rules shall not be in conflict with the general law as the same shall, from time to time, be established by the General Assembly.

Article VI, § 7. Selection . . . of judges. The justice of the Supreme Court of shall be chosen by vote of the . . . General Assembly. . . . The judge of all other courts of record shall be chosen by the . . . General Assembly . .

VIRGINIA CIVIL CODE INVOLVED

Va. Code § 54.1-3909. The Supreme Court may promulgate rules and regulations: . . . Prescribing procedures for disciplining, suspending, and disbarring attorneys.

Va. Code § 54.1-3910. Organization and government of Virginia State Bar. --The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar. The Virginia State Bar shall act as an administrative agency of the Court for the purpose of investigating and reporting violations of rules and regulations adopted by the Court under this article. . . .

Va. Code § 54.1-3915. Restrictions as to rules and regulations.---Not withstanding the foregoing provisions of this article, the Supreme Court shall not promulgate rules or regulations prescribing a code of ethics governing the professional conduct of attorneys which are inconsistent with any statute; . . . .

Va. Code § 54.1-3935. Procedure for revocation of license.

A. If the Supreme Court, the Court of Appeals, or any circuit court of this Commonwealth observes, or if a complaint, verified by affidavit is made by any person to such court, that any attorney has . . . violated the Virginia Code of Professional Responsibility, the court may assign the matter to the Virginia State Bar for investigation. Upon receipt of the report of the Virginia State Bar, the court may issue a rule against such attorney to show cause why his license to practice law shall not be revoked. If the complaint, verified by affidavit, is made by a district committee of the Virginia State Bar, the court shall issue a rule against the attorney to show cause why his license to practice law shall not be revoked.

B. If the rule [to show cause] is issued by the Supreme Court . . . the rule shall be returnable to the Circuit Court of the City of Richmond. At the time the rule is issued by the Supreme Court, the Chief Justice shall designate three circuit court judges to hear and decide the case. . . .

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2. *Void* Order of the Grievance Panel affirming reciprocal disbarment based on the *void* order of the VSBDB, U. S. Court of Appeals for the Second Circuit, Docket No. 08-90089-am, dated July 31, 2009 *In re Isidoro Rodriguez, Attorney,* A-2

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT No. 08-90089-am

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of November , two thousand nine,

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In re Isidoro Rodriguez,

08-90089-am

Attorney, ORDER

Isidoro Rodriguez has filed a petition for rehearing *en banc* of this Court's July 31, 2009 order. We construe his petition as seeking panel rehearing or, in the alternative, *en banc* rehearing.

The panel that entered the July 31, 2009 order having considered the request for panel rehearing, and the active *members* of the Court having considered the request for rehearing *en bane,* it is hereby ORDERED that the petition is DENIED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
By: /S/

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT No. 08-90089-am

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 31ST day of July , two thousand nine,

Present: Jose A. Cabranes,
Robert D. Sack,
Richard C. Wesley,
Circuit Judges

In re Isidoro Rodriguez,

08-90089-am

Attorney,

ORDER OF GRIEVANCE PANEL

By order filed July 16, 2008, this Court expressed its intent to remove Isidoro Rodriguez from this Court's bar, pursuant to the reciprocal disciplinary provisions of Second Circuit Local Rule 46.1 (f), based on a prior disbarment order of the Virginia State Bar Disciplinary Bar, which was affirmed by the Supreme Court of Virginia. Thereafter, Rodriguez moved for the revocation of this Court's reciprocal disbarment order and other relief. The filing of Rodriguez's motion stayed the effectiveness of the July 16, 2008 order.

As a preliminary matter, to the extent Rodriguez requests oral argument or an in-person hearing, the request is denied. Rodriguez has had ample opportunity to address all relevant issues, he has submitted several lengthy memoranda challenging the imposition of reciprocal discipline, there are no factual or legal issues requiring an in-person hearing, and no other considerations suggest that the matter cannot be adequately and fairly heard through paper submissions. Neither the federal rules nor due process require oral argument or an in-person hearing under these circumstances. *See In re Jacobs,* 44 F.3d 84, 90-91 (2d Cir. 1994) (holding that district court grievance panel's refusal to hold evidentiary hearing in reciprocal disciplinary proceeding did not violate due process); *Pacific Harbor Capital, Inc. v. Carnival Air Lines,* 210 F.3d 1112, 1118 (9th Cir. 2000) ([A]n opportunity to be heard [before an attorney id disciplined] does not require an oral or evidentiary hearing on the issue. . . . The opportunity to brief the issue fully satisfies due process requirements.").

Upon due consideration of all of the submissions, it is hereby ORDERED that the motion for revocation of this Court's order removing Isidoro Rodriguez from the bar of this Court is DENIED and the stay of the effectiveness of the July 16, 2008 order is terminated. Rodriguez has not demonstrated that reciprocal disbarment is unwarranted for any of the reasons discussed in *In re Edelstein*, 214 F.3d 127, 131 (2d Cir. 2000)((applying *Selling v. Radford*, 243 U.S. 46, 51 (1917)). We reject all of Rodriguez's arguments, including his argument that the Virginia disbarment orders are void, that the Virginia disbarment was

imposed for retaliatory or other improper reasons, and that the Virginia proceedings violated his due process rights.

Finally, Rodriguez's request for protection under 18 U.S.C. § 3771 and other provisions of federal law is also DENIED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
By: /S/